



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0713; FRL-10024-03-Region 6]

Air Plan Approval; Texas; Revisions to the Texas Diesel Emissions Reduction Incentive Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a revision to the Texas State Implementation Plan (SIP) that pertains to the Texas Diesel Emissions Reduction Incentive Program, submitted on August 13, 2020.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2020-0713. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Carl Young, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6645, young.carl@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our March 16, 2021 proposal (86 FR 14396). In that document, we proposed to approve a revision to the Texas SIP that pertains to the Texas Diesel Emissions Reduction Incentive Program. Specifically, we proposed to approve revisions to 30 TAC 114.622 and 114.629 adopted on June 10, 2020 and submitted on August 13, 2020. The revisions: (1) lowered the required minimum usage for grant-funded vehicles and equipment in the eligible area from 75% to 55% and (2) removed Victoria County from the list of counties eligible for program grants.

We received a comment on the proposal. The original comment is in the docket to this rulemaking action. Our response to the comment is discussed below.

II. Response to Comments

Comment: A comment was received that supports the market based economic incentive strategy to reduce diesel emissions as a step in the right direction, towards transitioning to clean, renewable energy, and ultimately mitigating climate change. The commenter also asked what would incentivize the people of Victoria County to continue reducing their diesel emissions if they are not eligible for grants under the State program, even though the County is meeting current emission standards.

Response: We appreciate the support for the Diesel Emissions Reduction Incentive Program (DERIP) that is administered by the State of Texas. As we noted in our proposal, DERIP is a voluntary incentive program. It is not a requirement of the CAA. Its inclusion in the SIP is discretionary and revisions can be made as long as they do not contribute to nonattainment or interfere with maintenance of the NAAQS. We also note that Victoria County is in attainment of all the ozone NAAQS and the State may elect which counties participate in this voluntary program. Similar to the Texas program, the EPA administers the Diesel Emission Reduction Act

(DERA) Program. This national program offers funding for projects that reduce diesel emissions from existing engines. The people of Victoria County are eligible for grants from this program. More information on the DERA program is available at: <https://www.epa.gov/dera>.

III. Final Action

We are approving the revisions to 30 TAC 114.622 and 114.629 adopted on June 10, 2020 and submitted on August 13, 2020.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of this action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 20, 2021.

David Gray,
Acting Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. In §52.2270(c), amend the table titled “EPA Approved Regulations in the Texas SIP” by revising the entries for “Section 114.622” and “Section 114.629” to read as follows:

§52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State Citation	Title/Subject	State approval/ submittal date	EPA approval date	Explanation
* * * * *				
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
* * * * *				
Subchapter K—Mobile Source Incentive Programs				
Section 114.622	Incentive Program Requirements	6/10/2020	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
Section 114.629	Affected Counties and Implementation Schedule	6/10/2020	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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